

**From:** Graff, Gary (ECY)  
**To:** [Pongkhamsing, Chan](mailto:Pongkhamsing.Chan@epa.gov)  
**Subject:** RE: Seaman-ShawCreek FW: Scheme to repeatedly violate CWA  
**Date:** Tuesday, August 01, 2017 3:17:58 PM  
**Attachments:** [image002.png](#)

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Thank you Chan. I am moving it up the ranks as well as the narrative doesn't match my understanding of the landscape.

Gary

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**From:** Pongkhamsing, Chan [mailto:[Pongkhamsing.Chan@epa.gov](mailto:Pongkhamsing.Chan@epa.gov)]  
**Sent:** Tuesday, August 1, 2017 3:11 PM  
**To:** Graff, Gary (ECY) <[GAGR461@ECY.WA.GOV](mailto:GAGR461@ECY.WA.GOV)>  
**Subject:** Seaman-ShawCreek FW: Scheme to repeatedly violate CWA

Hi Gary,

Thanks for your response to my initial forwarded email to you from Mr. Seaman. I do recall talking to Cathy Reed on Mr. Seaman's initial complaint of alleged fill and diversion of Shaw Creek. Cathy did inform me that she did not witness any CWA 404 alleged violations.

Anyhow, Mr. Seaman's current allegations of this "prescription scheme" by local and state agencies to undermine the CWA is extra-ordinary. Frankly, I'm not sure what to do with it. After consulting with our attorney, we feel it is in EPA's best interest of good governance, transparency, and coordination to inform all agencies that have been accused by Mr. Seaman. Thus, this forwarded email to you.

Furthermore, I am referring these accusations to the Washington State Attorney General's Office.

Respectfully,



Chan Pongkhamsing  
CWA 404 Enforcement Coordinator  
Office of Compliance and Enforcement  
U.S. EPA, Region 10  
1200 Sixth Avenue, Mail Stop OCE-101  
Seattle, Washington 98101  
(206) 553-1806

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**From:** MATTHEW SEAMAN [<mailto:matthew142@msn.com>]  
**Sent:** Monday, July 17, 2017 9:22 AM  
**To:** Pongkhamsing, Chan <[Pongkhamsing.Chan@epa.gov](mailto:Pongkhamsing.Chan@epa.gov)>  
**Cc:** Jim Adams <[jka@wlalaw.org](mailto:jka@wlalaw.org)>  
**Subject:** Scheme to repeatedly violate CWA

To: Chan Pongkhamsing (EPA)  
From: Matthew Seaman  
CC: Jim Adams  
Date: July 17, 2017

You mentioned in your recent email that Ecology was delegated the role of investigating Shaw Creek Clean Water Act violations of 2012. Do you have access to the Ecology investigation materials? I need copies of all available materials. I am aware of one conference call involving Ecology, the EPA, and the USACE. Beyond that, I do not believe that Ecology performed any meaningful investigation or enforcement action following well-documented Shaw Creek Clean Water Act violations (relocation of jurisdictional watercourse into a ditch without issuance of permits; filling of the jurisdictional Shaw Creek watercourse with excavation spoils; filling of jurisdictional Shaw Creek wetlands).

One attachment (Prescription Scheme Summary):

The content of the attached document describes a "prescription scheme" involving the WDFW and Yakima County that is used to repeatedly plan and implement violations of the Federal Clean Water Act. As a result of unlawful watercourse relocation, repeated dredging, filling of wetlands, and other violations, the environment is being progressively and irreversibly destroyed by the WDFW and by Yakima County. The incident case involved a relocation of Shaw Creek at the Bainter site of Shaw Creek. In addition, the jurisdictional Shaw Creek watercourse and jurisdictional wetlands were filled with excavation spoils in 2012. The EPA should be aware of the incident case at the Bainter site; however, a citizen lawsuit filed under the CWA will likely result in mandatory site restoration.

Additional violations of the Federal Clean Water Act have been prescribed by the WDFW in 2013, 2014, 2015 and 2016. Repeated CWA violations, planned and prescribed by the WDFW, continue since the principal individuals using the prescription scheme at the WDFW and at Yakima County continue to be employed and actions remain unchecked. Regulatory agencies such as Ecology know of the unlawful prescription scheme but do nothing to dismantle the scheme that repeatedly is used to plan and implement violations of the Federal Clean Water Act.

The EPA possesses the authority to investigate Yakima County by performing an audit of project files where jurisdictional watercourses have been dredged. Several examples are listed within the attached document, affirming that Yakima County dredges jurisdictional streams without issuance of required COE 404 Fill & Dredge permits. A greater amount of detail is contained within the attached document. By investigating Yakima County permits, the EPA will affirm that required permits are not obtained by Yakima County when performing "dredge and fill" involving jurisdictional watercourses. And the EPA will affirm that the WDFW actually "prescribes" the violations of the Clean Water Act. For the EPA, the simplest method of dismantling the prescription scheme is to perform an audit of Yakima County project files, affirming that watercourse dredging repeatedly occurs without issuance of required COE 404 Fill & Dredge permits.

Significant conflicts of interest exist within the State of Washington Department of Ecology. While Ecology has demonstrated limited interest in wetland replacement, Ecology officials (Reed, Clean, Park) have demonstrated no interest in the unlawful watercourse relocation and unlawful dredging occurring in Yakima. In fact, Ecology is providing repeated grant funding to Yakima County that will be used to destroy the environment of Shaw Creek and destroy the environment of Wide Hollow Creek. Ecology officials must not be involved with new investigations of Yakima County and new investigations of the WDFW due to well-documented conflicts of interest.

The EPA must ensure that the prescription scheme is investigated and then dismantled. Clean Water Act litigation is designed to ensure that site restoration at the Bainter site occurs. However, sequential lawsuits for repeated, pre-planned, prescribed violations of the Federal Clean Water Act (per plans of the WDFW and plans of Yakima County) are costly and inefficient. The correct response from the EPA will be to audit project files within the planning department of Yakima County, affirm that required permits (COE 404 Fill & Dredge) were not obtained, affirm the existence of the unlawful prescription scheme, and then dismantle the prescription scheme that is used to repeatedly violate the Federal Clean Water Act.

Yakima County has submitted application materials to the USACE for a COE 404 Fill & Dredge permit for the "Shaw Creek flood hazard mitigation project" where Shaw Creek will be relocated into a groundwater ditch.

Secretive project elements include the damming of Wide Hollow Creek with an associated construction of a retention pond. And secretly, Wide Hollow Creek will be relocated into a roadside ditch. And a so-called "access road" along the groundwater ditch will actually be a dike, subject to inspection by the USACE. Yakima County was a participant in the Shaw Creek relocation of 2012 at the Bainter site. Yakima County is now proposing to relocate Shaw Creek for a second time without ensuring compliance with the Clean Water Act related to the first, pre-planned relocation of Shaw Creek that occurred in 2012. The EPA is in a position to review issuance of USACE permits to Yakima County. As such, the EPA will likely be asked to review the issuance of a COE 404 Fill & Dredge permit to Yakima County for the proposed relocation of Shaw Creek into a groundwater ditch. The EPA must not approve the issuance of a COE 404 Fill & Dredge permit to Yakima County. Within Federal District Court, current CWA litigation is designed to ensure Shaw Creek restoration following well-documented violations of the Federal Clean Water Act. Only following full site restoration of Shaw Creek will any new developer (i.e. Yakima County) be allowed to perform new development involving the site.